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SUBJECT: BOLIVIA: NEW JUDICIAL APPOINTMENTS RELATIVELY DIVERSE

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11. (SBU) Summary: President Evo Morales on February 18 announced temporary judicial appointments to fill eighteen vacancies in the Supreme Court, Constitutional Tribunal, and Judicial Council. Most appointees drew praise for their qualifications and judicial independence. Only five are declared members of the ruling Movement Toward Socialism (MAS) party, and approximately 40 percent are women. Opposition leaders complained the action was unconstitutional and further concentrated Morales' hold on power, while GOB sources countered by arguing that the courts' deficit of over 20,000 pending cases called for swift action. In December, Bolivians will formally reconstitute all three bodies through national elections. End summary.

#### New Appointments More Diverse Than Anticipated

12. (C) President Morales' eighteen judicial appointments drew unexpected praise from a wide cross-section of media and legal sources. Some feared that Morales would use the recently-passed "ley corta" -- which gives the president the authority to appoint judges directly until national elections in December (reftel) -- to stack all three bodies with allies and ideologues. Instead, the appointees have been regarded generally as qualified and independent judicial thinkers. Former Constitutional Tribunal president (and Morales foe) Silvia Salame said approvingly that "these are not people who will go down on bended knees easily [to Morales]," and that the appointments give a "balance" to the judiciary.

13. (SBU) The Supreme Court has been functioning with only six of its twelve members (with a seventh suspended), and its case load has grown precipitously. According to official statistics, the Supreme Court has more than 13,000 pending cases, and over 8,000 inmates remain detained in prisons awaiting final sentence. Of his five appointments, Morales chose two judges believed to be sympathetic to the MAS and one Santa Cruz superior district court judge known for his independence. Two of the appointees are relative political unknowns. The five appointees are from geographically diverse areas, including Sucre, Oruro, Potosi, Cochabamba, and Beni. When added to the existing members of the Supreme Court, it is unclear whether the Court will contain even a majority of MAS partisans.

¶4. (C) The Constitutional Tribunal, which contains five titular magistrates and five alternates, lost its last remaining member with Silvia Salame's resignation (under protest) in May 2009. Salame and others charged the MAS with hounding them out of their positions in an attempt to remove judicial oversight over the Morales administration (reftel B), and the Constitutional Tribunal now faces over 5,000 pending cases. Despite Salame's concern, none of the five titular magistrates nominated by Morales is reputed to be openly supportive of the MAS. Instead, all five are well-known, experienced judges and lawyers, including one constitutional law specialist. Bernardo Wayar, past president of the La Paz Bar Association and frequent Morales critic, said: "Whether or not the 'ley corta' itself is constitutional, one has to say the appointments are generally good. In the Constitutional Tribunal specifically, I don't see the appointees as affiliated with the government - and that is a good thing."

¶5. (SBU) The Judicial Council, a disciplinary and legal oversight body headed by the president of the Supreme Court and four Council members, had three vacancies. Morales' three appointments are all known as MAS supporters, including a former MAS party advisor, a member of Morales' inner circle, and the first indigenous female to be appointed to the Council. The Judicial Council is not as prestigious as the other two bodies, but it has responsibility to sanction or fire members of the judicial branch (except those from the Supreme Court and Constitutional Tribunal). Opposition members charged that the role of the Judicial Council would now be to ensure that the Supreme Court and Constitutional Tribunal do not

stray too far from MAS preferences.

Opposition Fears Unrealized... For Now

¶6. (U) Despite the overall praise for most of the appointees, the opposition continued to criticize the 'ley corta' (and the appointments themselves) as unconstitutional. Many said that Morales' ability to appoint judges directly signaled his desire to further concentrate of power. In news reports, opposition Deputy Jaime Navarro (Unity party), said the law "directly injected" the executive branch into the affairs of the judiciary. Former Vice President Victor Hugo Cardenas agreed, saying if such steps continued, democracy in Bolivia "would pass into history." Still, several contacts admitted their relief that Morales stalwarts such as former Defense Minister Walker San Miguel had not been chosen and that "the situation could have been much worse."

Comment

¶7. (C) Despite opposition predictions that Morales' appointments are "a smokescreen," and that he plans to name much more ideologically "in-tune" candidates for the December elections, it appears that these appointments represent a broad swath of the Bolivian legal community, both in terms of judicial outlook and geography. Morales campaigned on an efficiency and anti-corruption platform, including in the judiciary, and these appointments seem designed more to implement that pledge than to stack the judiciary with MAS hardliners. Still, the fact that they are temporary appointments does leave them potentially more vulnerable to political pressure or manipulation.

Creamer